

**STATEMENT OF  
THE HONORABLE STEVEN R. BLUST  
CHAIRMAN, FEDERAL MARITIME COMMISSION  
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BEFORE THE  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE  
SUBCOMMITTEE ON COAST GUARD AND  
MARITIME TRANSPORTATION  
UNITED STATES HOUSE OF REPRESENTATIVES  
MARCH 3, 2005**

Mr. Chairman and members of the Subcommittee, it is a pleasure to appear before you today to present the President's fiscal year 2006 budget for the Federal Maritime Commission. With me today are Amy W. Larson, the Commission's General Counsel, Austin L. Schmitt, the Director of Operations, and Bruce A. Dombrowski, the Director of Administration.

The President's budget for the Commission provides for \$20,499,000 for fiscal year 2006. This represents an increase of 6%, or \$1,158,968, over our fiscal year 2005 appropriation. This budget provides for 133 workyears of employment.

Our fiscal year 2006 budget request contains \$15,218,000 for salaries and benefits to support the Commission's programs. This is an increase of \$874,968 over our fiscal year 2005 appropriation. This includes all salaries, including those for the employees hired in fiscal year 2005, promotions, within-grade increases, and an anticipated cost of living adjustment. The funding includes annualization of the fiscal year 2005 cost of living adjustment increase, and an anticipated 2.4 percent fiscal year 2006 cost of living adjustment. Further, it does not contain funding for any additional positions; it only will fund the number of positions anticipated to be on board at the beginning of fiscal year 2006.

Official travel has been straight-lined at our fiscal year 2005 level. Travel remains an essential aspect of our effort to provide better service to the ocean transportation industry and to accomplish our oversight duties more effectively. Lastly, administrative expenses will have increased \$284,000 over fiscal

year 2005. The Commission is planning for an increase in rent to accommodate GSA rental rate increases, as well as an increase to fund Homeland Security charges. Other administrative expenses will be incurred in fiscal year 2006 to support increases in our customary business expenses, such as maintaining government and commercial contracts, and for items such as telephones, postage, and supplies, as well as to pay for the lease-to-purchase of agency computers.

As we have noted in prior years, the Commission's budget contains primarily non-discretionary spending. It is composed of mandatory or essential expenses such as salaries and benefits, rent and guard services, health services, accounting services, telephone and other communication costs, supplies, mandatory training, and printing and copying costs. These items represent the basic expenses any organization faces in order to conduct its day-to-day operations, and are crucial to allow us to meet the responsibilities Congress has entrusted to the agency.

As you know Mr. Chairman, the Commission is responsible for the regulation of oceanborne transportation in the foreign commerce of the United States. Since 1916, the Commission and its predecessor agencies have effectively administered Congress' directives for the ocean transportation industry, and its long-standing expertise and experience have been recognized by Congress, as well as by the industry the Commission oversees, courts, and other Nations. Working with the industry, we have developed a regulatory system that allows for necessary oversight with minimal disruption to the efficient flow of U.S. imports and exports. I would like to highlight for you some of the significant activities in which the Commission is involved.

I am pleased to advise you that as of January 19th of this year, non-vessel-operating common carriers ("NVOCCs") are now permitted to enter into confidential arrangements with their shipper customers detailing the terms and conditions of their international ocean transportation. As you know, the Shipping Act permits ocean common carriers, or vessel-operating common carriers ("VOCCs"), to enter into service contracts with one or more of their shipper customers, and the Ocean Shipping Reform Act ("OSRA") provides that these contracts are filed confidentially with the Commission. While NVOCCs may enter into service contracts as shippers with ocean carriers, the Act does

not grant NVOCCs the right to offer service contracts in their capacity as carriers to their shipper customers.

As you might recall, the Commission had received eight petitions, seven from individual NVOCCs and one from the National Customs Brokers and Forwarders Association of America, a national trade association representing NVOCCs, seeking various types of relief from this disparate treatment. These petitions generated hundreds of comments from the industry as well as Members of Congress. Subsequently, several of the petitioners, along with the Transportation Intermediaries Association and the National Industrial Transportation League, filed a joint proposal with the Commission suggesting a unified approach to this issue. After assessing that proposal, the Commission issued a proposed rule to grant the relief the industry was seeking within the parameters of the Shipping Act.

In order to grant an exemption from the requirements of the Shipping Act, the Commission must find that it will not result in a substantial reduction in competition or be detrimental to commerce. Based on these criteria, the proposed rule set forth a conditional exemption from the tariff publication requirements of sections 8 and 10 of the Shipping Act. The Commission made minor modifications to the proposal based on comments received from the industry, and I am pleased to report that a final rule is now in effect. NVOCCs otherwise in compliance with the licensing, financial responsibility, and tariff publication requirements of the Shipping Act may now enter into confidential NVOCC Service Arrangements ("NSAs") with their shipper customers in lieu of publishing those rates in a publicly-available tariff, provided that the NSA is filed confidentially with the Commission and the essential terms are published in the NVOCC's tariff. This new regulatory scheme is consistent with the regulations governing service contracts between ocean common carriers and their shipper customers, and we anticipate that it will result in greater competition in the shipping industry.

To ensure that NSAs are consistent with the statutory scheme established by Congress in the Shipping Act, the regulations proscribe certain types of discriminatory conduct similar to the prohibitions applicable to service contracts in section 10 of the Shipping Act. In addition, the rule does not permit unrelated NVOCCs from jointly offering NSAs, nor does it allow NVOCCs or shippers associations with NVOCC members to participate in NSAs as shippers. We are certainly mindful of

industry concerns over these limitations. However, we believe they are necessary as a result of recent judicial interpretations which construe the antitrust provisions of the Shipping Act in a manner we believe to be much broader than what was envisioned by Congress, this Commission, and indeed even the industry. As we indicated when we issued the final rule, we will monitor the judicial developments and continue to work with the industry to address this issue as circumstances warrant.

Also in January, the Commission implemented new regulations governing agreements among ocean common carriers and marine terminal operators. The new rules reduce the burden and cost of complying with the agreement filing requirements of the Shipping Act while ensuring that the Commission receives the information necessary for effective oversight. The rules provide the shipping industry with enhanced certainty as to FMC requirements, continued flexibility in commercial relationships, and sufficient confidentiality for sensitive commercial information. The provisions governing modifications and exemptions have been clarified, and include a new exemption for low market share agreements among ocean common carriers that do not contain pricing or capacity rationalization authority. Further, the information, monitoring report and minutes reporting requirements have been reformulated, reducing the overall burden of complying with the Commission's rules. We continue our vigilant review of carriers' utilization of their antitrust immunity to ensure that their collective activities do not result in market-distorting practices, and the new regulations will further our efforts in this area, while permitting the agreement parties the flexibility they need for successful commercial relationships.

The Commission continues to address restrictive or unfair foreign shipping practices under section 19 of the Merchant Marine Act, 1920 ("Section 19"); the Foreign Shipping Practices Act of 1988 ("FSPA"); and the Controlled Carrier Act of 1978. Section 19 empowers the Commission to make rules and regulations to address conditions unfavorable to shipping in our foreign trades; FSPA allows the Commission to address adverse conditions affecting U.S. carriers in our foreign trades that do not exist for foreign carriers in the United States. Under the Controlled Carrier Act, the Commission can review the rates and rules of government-controlled carriers to ensure that they are not unjust or unreasonable.

When I was here last, I advised you of several pending proceedings related to shipping conditions in China. In particular, the Commission was investigating whether Chinese laws and regulations might discriminate against and disadvantage U.S. vessel operators and NVOCCs with regard to a variety of maritime-related services. In December of 2003, the United States, through the Secretary of Transportation, and his Chinese counterpart, the Minister of Communications, signed a bilateral maritime agreement which appeared to address many of the concerns raised by the Commission, including issues affecting vessel operators, NVOCCs, and other industry interests. That agreement became effective with the exchange of diplomatic notes in April of 2004.

Subsequently, the Commission requested comment from the industry on whether the commitments made in the bilateral agreement, which would have relieved the impediments to U.S. companies identified by the FMC, were being honored. The Commission will issue its final decision in this matter shortly; in addition, I am pleased to report to you that many of the issues we raised have been adequately addressed. Thus far, we have received positive feedback from the U.S. industry in this regard. In particular, 29 U.S. NVOCCs have availed themselves of the opportunity provided for in the Commission's rules to file proof of additional financial responsibility with the Commission as an alternative to meeting China's requirements for the deposit of at least \$96,000 in a Chinese bank.

We will continue to monitor practices in China and elsewhere to determine whether formal action is warranted. I am encouraged that the Commission's traditional practice of allowing for a diplomatic resolution to the issues we have raised in the foreign trades has again been fruitful.

I have previously informed you about the agency's public outreach initiative involving a series of informational seminars hosted by the Commission's Area Representatives and other Commission personnel at various locations around the country. These seminars have been successful in creating a forum for continued and enhanced dialogue between the industry and the Commission. I am pleased to report that we have started a new program where we have invited representatives from various segments of the industry to brief our staff on current issues and concerns affecting U.S. international liner shipping. Thus far, we have met with representatives from the ocean

transportation intermediary and vessel operator communities, and we are planning additional briefings later in the year with shippers, marine terminal operators, port authorities, passenger vessel operators, and other segments of the maritime industry. I am confident that these briefings will provide the Commission and its staff with a greater awareness and understanding of the most current issues facing the maritime community.

Likewise, the agency's new organizational structure has proven beneficial. As I reported to you last August, the Commission refined the agency's organizational structure to reallocate existing resources to maximize the effectiveness of the staff and facilitate agency efforts to better serve the ocean transportation industry. This was the result of a several-month effort to review the Commission's work processes and practices in light of changes in the industry. To better carry out the Commission's compliance and outreach initiatives, our Area Representatives, previously assigned to the Bureau of Enforcement, now report to the Director of Operations. In addition, to more effectively address the rapid growth of the Commission's consumer complaints program, that program and the alternative dispute resolution function were combined into a new Office of Consumer Affairs and Dispute Resolution Services. As I have mentioned in the past, we are able to provide a mechanism for parties involved in ocean transportation to settle their disputes without the need for costly and time-consuming litigation. The Commission's consumer affairs staff is able to assist in the resolution of informal disputes and formal proceedings involving cruises and the shipment of cargo. Additionally, the Office of Administration now has oversight over the four administrative offices: the Office of Budget and Financial Management; the Office of Human Resources; the Office of Information Technology; and the Office of Management Services. I am pleased to report that these modifications have resulted in greater communication and effectiveness between the Commission and the shipping public. Our new structure not only provides an effective regulatory structure suitable for today's shipping industry, it also allows us the flexibility necessary to grow and change as the industry continues to evolve.

Lastly, the Commission recognizes that its oversight of ocean common carriers, ocean transportation intermediaries, including ocean freight forwarders and non-vessel-operating common carriers, and marine terminal operators, is an important element in the effort to protect our Nation's seaports. We are

continuing our efforts to combat unlawful participation in the U.S. ocean transportation system by ensuring that all entities engaged in the U.S. foreign commerce are in compliance with the requirements of the Shipping Act. In addition, we submitted a report to Congress in November of 2004 detailing our cooperation with other agencies involved in maritime transportation, including the Department of Homeland Security, Department of Transportation and intelligence agencies, regarding information-sharing and other possible FMC contributions to the efforts to ensure a safe and efficient maritime transportation system.

Mr. Chairman, I hope that my comments have served to give you a clear indication of the important work to be accomplished by the Federal Maritime Commission. I respectfully request favorable consideration of the President's budget for the Commission so that we may continue to perform our vital statutory functions in fiscal year 2006.